



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: CHI Fabrication Services

File: B-275079

Date: January 22, 1997

Timothy E. Heffernan, Esq., Watt, Tieder & Hoffar, for the protester.

Alex D. Tomaszczuk, Esq., and Devon E. Hewitt, Esq., Shaw Pittman Potts & Trowbridge, an intervenor.

Cecilia R. Jones, Esq., and Alden Abbott, Esq., Department of Commerce, for the agency.

Marie Penny Ahearn, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly rejected protester's proposal as technically unacceptable where solicitation required offerors to submit drawings and data to establish that offered item met design requirements, and protester's drawings and accompanying description did not indicate that all requirements were met.

DECISION

CHI Fabrication Services (CHI) protests the award of a contract to General Scientific Corporation under request for proposals (RFP) No. 52-PAPT-6-00009, issued by the Patent and Trademark Office, Department of Commerce, for the design and fabrication of file/mail carts. The protester challenges the evaluation of technical proposals.

We deny the protest.

The solicitation contemplated the award of a fixed-price, indefinite-quantity contract for a base year, with four 1-year option periods, to provide a minimum of 5 and a maximum of 300 carts. It included required dimensions, materials, and features of the cart, but left it to offerors to propose viable configurations. The solicitation included a "rough drawing of what the cart to be proposed should resemble" and instructed offerors "to provide all necessary drawings and data that will assure the functional features have been met," as well as a "bill of materials of all components which discloses the type and grade of materials and that they meet structural and design constraints as set forth." Generally, the solicitation required the cart to have the minimum dimensions of 51 inches height, 19 inches depth and 40 inches width,

with stainless steel construction and caster wheels welded to the base. The cart was to be "6 inches above the ground to prevent jamming onto the instep" and was to have 4 shelves, each with the minimum dimensions of 11 inches height (distance between each shelf), 16 inches depth, and 35.5 width, with a retainer bar and latch mechanism in front to prevent files from falling out of the cart. The solicitation further required the cart to have a minimum of five dividers for each shelf, which were to be "constructed of stainless steel and in a manner that allows files to be kept upright," and "adjustable as well as removable from the shelf (not the cart)." While dividers were not shown on the drawing, the solicitation instructed offerors to include them on the drawings submitted with their proposals.

The solicitation set forth two equally weighted technical evaluation factors--compliance with specifications and past performance--which were significantly more important than price, and provided for award to be made to the responsible offeror whose offer provided the best value to the government.

The agency received eight proposals, 3 of which were rejected based on the initial evaluation. The agency held two rounds of discussions with the remaining offerors, including CHI and General Scientific, and gave those offerors the opportunity to submit revisions and best and final offers (BAFO). Following the initial evaluation, the agency advised CHI that its cart was noncompliant with the requirement that the dividers be adjustable as well as removable from the shelf, but not the cart. In response, CHI's revised proposal included a drawing which showed a black line, labeled sash chain, one end of which was attached to a divider, and the other to an unlabeled black dot (which was inside a circle). The firm's corresponding bill of materials indicated that the sash chain was 6 inches long. After evaluation of revised proposals, the agency advised CHI that its sash chain approach for the dividers was unclear and potentially hazardous. The protester responded by explaining that the sash chain would be welded to the retainer bar, and that the dividers when not in use would hang outside the front of the cart. The agency reiterated to the protester that its approach was not clearly shown on its drawing and was potentially hazardous.

CHI's BAFO included additional drawings, including a top view, showing (1) a line, labeled sash chain, attached to an unlabeled black dot, and (2) five small half-circles, labeled sash chain, each attached to two unlabeled vertical lines. The accompanying narrative description stated, "[a]lso detailed is another 3/16 inch S/S bar (1/shelf), which the shelf dividers are attached to by way of welding a chain and washer," and that "[t]his allows the dividers to be removed from the shelf, but not the cart." After the BAFO evaluation, the agency determined that the functioning of CHI's proposed divider system remained unclear from the proposal. However, based on CHI's remarks during discussions--that the sash chains would be welded to the retainer bar and the dividers would hang outside the cart when not in use--the agency concluded that the system was noncompliant with the 6-inch ground

clearance requirement. In this regard, the evaluators determined that since one end of each 6-inch sash chain would be attached to a divider and the other end to the shelf retaining bar, the dividers on the bottom shelf, when not in use, would hang from the shelf's retaining bar and extend below the required 6-inch clearance, thereby presenting the potential hazards of dragging on the floor, obstructing the casters, or getting caught on elevators.¹ The agency therefore determined that CHI's proposal was unacceptable, and made award to General Scientific.

CHI argues that its file/mail cart divider system is in fact technically compliant with all requirements. According to the protester, contrary to the agency's evaluation, its dividers would not hang outside of the cart in violation of the 6-inch clearance requirement. Specifically, the protester contends that its proposed sash chain is not welded to the retainer bar, but instead "the sash chain is welded to a washer that is [placed] around the retaining bar in such a manner as to allow the washer to slide the full length of the bar and hence the shelf." The protester maintains that its BAFO reflects this and "[w]hen not in use, [the dividers] could easily be slid to the end of the shelf or laid down on the shelf," and thereby would be compliant with the requirement to be removable from the shelf but not the cart and still meet the 6-inch clearance requirement.

In reviewing an agency's technical evaluation, we consider whether it was reasonable and in accord with the evaluation criteria listed in the solicitation. Information Sys. & Networks Corp., 69 Comp. Gen. 284 (1990), 90-1 CPD ¶ 203. In a negotiated procurement, an offeror must affirmatively demonstrate that its proposal will meet the government's needs where required by the solicitation. Discount Mach. & Equip., Inc., B-253094, Aug. 2, 1993, 93-2 CPD ¶ 68. Where, as here, a solicitation requires offerors to furnish information necessary to establish compliance with the specifications, an agency may reasonably find a proposal that fails to include such information technically unacceptable. Id.

The evaluation of CHI's divider system as technically noncompliant was reasonable. The protester's assertion to the contrary notwithstanding, its proposal does not explain the functioning of its sash chain approach adequately to establish that the dividers would not hang below the required 6-inch ground clearance. Neither the initial proposal nor BAFO drawings clearly depict CHI's approach; as discussed, they show only a sash chain attached to a divider, an unlabeled black dot, and an unlabeled bar, with no indication of a washer. While the BAFO narrative mentions that the shelf dividers are attached to a bar "by way of welding a chain and washer," it does not discuss how the washer would function in connection with the divider,

¹The evaluators also determined that the sash chain presented a further hazard in that the dividers hanging outside of the cart could swing and strike personnel and walls.

sash chain, and retaining bar. Consequently, based on this limited information, the agency reasonably concluded that one end of each 6-inch sash chain would be connected to a divider and the other to the shelf retaining bar, that the dividers would have to hang outside the cart when not in use, and that the dividers hanging off of the bottom shelf would violate the clearance requirement and create a potentially hazardous condition. Offerors bear the responsibility for the rejection of their proposal where they fail to provide sufficient information to establish compliance with solicitation requirements. See Herndon Science and Software, Inc., B-245505, Jan. 9, 1992, 92-1 CPD ¶ 46.²

In any case, the agency states that it has considered CHI's post-BAFO explanation of its washer and chain configuration and determined that it would not meet the solicitation's requirements for several reasons. For example, the agency notes that laying the unused dividers on the shelf or moving them to the end of the shelf would reduce the available shelf width below the required 35.5 inches. Further, if the shelf were filled with material when the user wanted to remove the divider, the divider could not be moved to the end or laid flat when not in use; the dividers presumably would have to hang outside the cart under this scenario.

CHI also challenges the evaluation of General Scientific's proposal. However, under our Bid Protest Regulations, a protester is not an interested party to challenge an award where it would not be in line for award if the challenge were sustained. Sections 21.0(a) and 21.1(a), 61 Fed. Reg. 39039, 39042, 39043 (1996) (to be codified at 4 C.F.R. §§ 21.0(a) and 21.1(a)). Since the agency properly found CHI's proposal technically unacceptable, and there was another acceptable proposal (in addition to General Scientific's) in the competitive range, the protester is not an interested party for purposes of challenging the award to General Scientific. Dick Young Prod., Ltd., B-246837, Apr. 1, 1992, 92-1 ¶ 336.

The protest is denied.

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²The protester further argues that its proposal was improperly rejected on the basis of an unstated requirement, *i.e.*, that its drawings show the dividers when not in use. However, as indicated above, the solicitation required offerors to submit "all necessary drawings and data that will assure the functional features have been met." It thus was incumbent upon offerors to indicate in their proposals--on their submitted drawings or otherwise--that their offered cart met the requirements relating to the dividers, including the 6-inch clearance requirement.